

Agricultural Marketing Service, USDA

§ 97.105

sent to the applicant or his or her attorney or agent of record, if any, calling for the payment of the prescribed fee, which fee shall be paid within 1 month from the date of the notice of allowance. Thereafter, a fee for delayed payment shall be made as required under § 97.175.

§ 97.102 Amendments after allowance.

Amendments to the application, after the notice of allowance is issued, may be made, if the certificate has not been issued.

§ 97.103 Issuance of a certificate.

(a) After the notice of allowance has been issued, the prescribed fee is received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner.

§ 97.104 Application or certificate abandoned.

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 1 month from the date of the notice, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed sample of the variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal, indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed sample or the fee for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting a viable basic seed sample before declaring the certificate abandoned.

(d) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

§ 97.105 Denial of an application.

(a) If the variety is found by the examiner to be not new, distinct, uniform, and stable, the application shall be denied.

(b) In denying an application, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.